

In re) Fair Hearing No. 16,086
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 Appeal of)
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The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits.¹ The issue is whether the petitioner's husband must be considered a member of the petitioner's household.²

1. The petitioner, her husband, and their daughter came to the United States from Russia in 1995, and originally settled in New York City, where the petitioner's husband found work.

3. The petitioner applied for and was granted ANFC and Food Stamps in Vermont for herself and her daughter effective September, 1998.

5. In February, 1999, the petitioner had surgery and had to stop working. She

¹ Because it is unclear whether the petitioner also wished to appeal the termination of her Food Stamps, and because the issues regarding her eligibility for that program may be different, the hearing officer has scheduled a further hearing on the issue of the petitioner=s eligibility for Food Stamps.

² The petitioner was the subject of Fair Hearing No. 16,049, in which the Board recently upheld the Department's decision terminating her ANFC, Medicaid, and Food Stamps based on excess resources in the form of an IRA and other bank accounts. The instant Fair Hearing stems from a separate notice sent to the petitioner regarding another issue of eligibility. The issue in the instant fair hearing must be resolved if, as expected, the petitioner spends down her excess resources and reapplies for benefits.

6. In April, 1999, the petitioner began working part time, and continued to receive ANFC and Food Stamps.

7. In June, 1999, the petitioner's husband was laid off from his job in New York, and he came to Vermont to join the petitioner and their daughter. The petitioner reported his arrival to the Department, and he was added to the petitioner's ANFC and Food Stamp grants while he looked for work in Vermont.

8. Within a month, however, the husband's former employer in New York offered him his old job back, and the husband decided to return to New York.

9. The petitioner reported her husband's return to work in New York to the Department, but based on information provided by the petitioner the Department determined that the husband was still a member of the petitioner's household and that his income was considered available to the household. The Department determined that this income was in excess of the program maximums and it terminated the petitioner's eligibility for ANFC and Food Stamps.

10. The petitioner does not dispute that her husband's monthly gross income from his job in New York is \$2474.65. However, the petitioner maintains that he uses all his income to maintain himself in New York, and that this income is not available to her and her daughter. She admits, however, that she and her husband are not "separated" as a married couple, and that her husband visits frequently, is still looking for work in Vermont, and plans on returning to Vermont if he finds a job.

11. The petitioner has not sought any child support from her husband during his absence, and she indicated she does not intend to do so. She feels he needs all his earnings to

support himself in New York, and that she and her child should be able to receive ANFC in Vermont.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2331 includes the following provisions:

Continued absence of a parent refers to physical absence of a parent from the home for one of the following reasons, the nature of which interrupts or terminates the parent's functioning as a provider of maintenance, physical care or guidance for the child.

. . .

Informal separation of parents without benefit of legal action.

. . .

The Board has repeatedly held that "absence" under the above definition is normally established whenever one parent does not reside with the other. However, the Board has also ruled that when absences appear to be contrived or deliberate the Department can look to the relationship of the parents to each other to resolve the question of whether the "absence" affects the degree of support, care, and guidance the allegedly-absent parent provides for the child. See Fair Hearings No. 9405, 8869, 8774, 8427, 6877, and 6111.

As discussed above, the petitioner in this matter freely admits that she and her husband are not "separated" in a marital sense. She further admits that her husband's decision to live in New York is with her complicity and is solely due to a perceived economic benefit (although

it appears that the petitioner assumed she and her child could continue to be separately eligible for ANFC³). At the hearing in this matter, the petitioner was advised that if she wished to maintain that she and her husband are separated for purposes of ANFC, the regulations require her to assign her right to child support to the Department and cooperate with the Department in pursuing it from her husband. See W.A.M. § 2331.31. As noted above, the petitioner has indicated she does not want to do this.⁴

If the petitioner's husband's income is included in the family's eligibility determination for ANFC, it is clear that the family is over income. W.A.M. § 2240.1. Under the circumstances, it must be concluded that unless and until the petitioner declares herself separated from her husband, and agrees to allow the Department to pursue child support from him, she cannot be eligible for a separate grant of ANFC for herself and her child. Therefore, the Department's decision is affirmed.

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³ At this time, the Department has not determined whether the petitioner should be found liable for an overpayment for the period September through November, 1998, through February through June, when her husband was also in New York under similar circumstances.

⁴ It is not clear whether the petitioner cooperated in the collection of child support from her husband during the period September, 1998, through June, 1999 (see footnote 3, *supra*).